

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

DON W. McKINNEY,

Plaintiff,

V.

WISE COUNTY CIRCUIT COURT,

Defendant.

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Case No. 2:23CV_____

(2:23MC00001)

OPINION AND ORDER

JUDGE JAMES P. JONES

Don W. McKinney, Pro Se Plaintiff.

In this pro se action, the plaintiff seeks to file a civil lawsuit involving his acquittal by reason of insanity in state court. Based upon prior financial affidavits he has submitted, I will allow his pleading, which I treat as a Complaint under 42 U.S.C. § 1983, to be filed without the payment of the filing fee, pursuant to 28 U.S.C. § 1915(a)(1). However, upon examination of the Complaint, I will dismiss the case.

The prior records of this court show that in October 1993, McKinney was arrested on a state criminal charge and a probation violation charge and he was detained until February 1994. He eventually pleaded not guilty by reason of insanity and has been thereafter confined in mental health institutions from time to time. Since then, he has filed numerous pro se actions in this court raising various complaints related to the state criminal case and his confinement. The court's

records indicate that since 1993, McKinney has filed at least 38 separate cases. The actions come on a regular basis, usually once or twice a year. In 2019, I imposed an injunction on McKinney from proceeding in forma pauperis in any action involving claims he previously had asserted, but that injunction expired according to its terms before the present pleading was filed. Pre-Filing Injunction, ECF No. 7, Case No. 2:18CV00051 (Jan. 7, 2019).

The only defendant named by him in the present action is the Circuit Court of Wise County, Virginia. Reviewing the Complaint, it is apparent that McKinney has failed to state a claim on which relief may be granted and accordingly, his action will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

The injunction, while it was in effect, appears to have deterred McKinney from attempted filings, and I advise him that if he continues to submit such lawsuits to this court, it may be necessary to reinstate the injunction.

It is hereby **ORDERED** as follows:

1. McKinney's lawsuit shall be filed without the payment of a filing fee;
and
2. The present action will be DISMISSED by separate order for failure to state a claim.

ENTER: July 24, 2023

/s/ JAMES P. JONES
United States District Judge